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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/559,478	04/27/2000	Richard A. Simon	81020F-P	1867

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PATENT LEGAL STAFF
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EXAMINER

SCHLAIFER, JONATHAN D

ART UNIT	PAPER NUMBER
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2178

DATE MAILED: 02/05/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/559,478

Applicant(s)

SIMON, RICHARD A.

Examiner

Jonathan D. Schlaifer

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 17 November 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,2 and 4-27 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-2,4-27 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 27 April 2000 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
- a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

1. This action is responsive to communications: Amendment filed on 11/17/2003.
2. The objections to the specification are withdrawn as necessitated by amendment.
3. The objections to claims 17-18 and 20-21 are withdrawn as necessitated by amendment.
4. The rejection according to 35 USC 112(b), second paragraph of claim 26 is withdrawn as necessitated by amendment.
5. The rejection according to 35 USC 101 of claims 1-15 and 23-25 is withdrawn as necessitated by amendment.
6. Claims 1-2 and 4-27 are pending in the case. Claims 1, 16, and 22-27 are independent claims.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

7. **Claims 1-3, 5, 8, 12, 22-23, 25 and 27 remain rejected under 35 U.S.C. 102(a) as being anticipated by King et al. (USPN 5,956,737—filing date 9/9/1996), hereinafter King**
8. **Regarding independent claim 1**, King, in col. 3, lines 31-51, describes a method of organizing a plurality of images in a predetermined page format (King describes a method of finding a layout for a composition, which may consist of images only) utilizing a software program running on a computer (King's invention is meant to be

based on a computer), grouping said plurality of images into a plurality of different page layouts (King uses a media tree of different layouts to arrive at the eventual layout, which exist as intermediate layouts), analyzing each of said different page layouts in accordance with respect to the amount of white space in each of said plurality of different page layouts (in col. 3, lines 19-21, King's tree analysis proceeds until primitives are reached; in col. 41 lines 5-10, a white space scale factor is clearly a factor in determining how layouts are arrived at), and selecting the page layout based on said the amount of white space determined for each of said plurality of plurality of different page layouts (since the white space scale factor in analyzing the layouts, it is presumably applied to the media tree).

9. **Regarding dependent claim 2**, King in col. 49, lines 48-58, describes the process by which media content is fit to the calculated layout. This constitutes a method further comprising placing said plurality of images in said selected page layout.
10. **Regarding dependent claim 5**, King describes in col. 41, lines 1-2 how scale factors may apply to particular design components, necessarily implying a method further comprising the step of further scaling the images of selected page layout by different amounts
11. **Regarding dependent claim 8**, King describes in the Abstract that there are "scale factors" which inherently involves a method wherein said placing of said plurality of images in said different page layouts comprises scaling all of said images such that they fit within said page format.

12. **Regarding dependent claim 12**, in col. 30, lines 65-66, King refers to taking account of a type of balance in how the elements are arranged on the page. This constitutes a method further comprising the step of spatially balancing the spacing between said images.
13. **Regarding independent claim 16**, it is a system that performs the method of claim 1 and is rejected under similar rationale.
14. **Regarding independent claim 22**, it is a computer software product encoded in a software readable medium that performs the method of claim 1 and is rejected under similar rationale.
15. **Regarding independent claim 23**, it is a claim that is identical to claim 1, except that it has the additional step of selecting a number of said images for placement on said predetermined format, but this is inherently part of the preparation for using King's invention, which has already been used to reject claim 1, and hence claim 23 may be rejected in a similar manner.
16. **Regarding independent claim 25**, King, in col. 3, lines 31-51, describes a method of organizing a plurality of digital images in a predetermined page format (King describes a method of finding a layout for a composition, which may consist of images only) utilizing the software program running on a computer (King's invention describes a computer product running on a computer, grouping said plurality of images into a plurality of different page layouts (King uses a media tree of different layouts to arrive at the eventual layout), analyzing each of said different page layouts in accordance with respect to the amount of white space in each of said plurality of different page layouts (in

col. 3, lines 19-21, King's tree analysis proceeds until primitives are reached; in col. 41 lines 5-10, a white space scale factor is clearly a factor in determining how layouts are arrived at), and selecting the page layout based on said the amount of white space determined for each of said plurality of plurality of different page layouts (since the white space scale factor in analyzing the layouts, it is presumably applied to the media tree). King further describes an option of choosing a tentative layout in col. 43, lines 50-65, which implies selecting at least one image (which is digital, as King to be placed in a predetermined image location and inherently involves identifying said at least one image and the location of said at least one predetermined image (presumably digital, as King is a computer program) location.

17. **Regarding independent claim 27**, it is a computer software product encoded in a software readable medium that performs the method of claim 25 and is rejected under similar rationale.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

18. **Claims 4, 9-10, and 24 remain rejected under 35 U.S.C. 103(a) as being unpatentable over King, further in view of Ross et al. (USPN 6,026,417—filing date 5/2/1997), hereinafter Ross**

19. **Regarding dependent claim 4**, King fails to disclose a method wherein analyzing said different page layouts comprises scoring each of said different page layouts. However, Ross, in col. 28, lines 42-65, describes how a Page Manager calculates a closeness score as part of preparing page layouts in order to aid the decision process, which constitutes a situation wherein analyzing said different page layouts comprises scoring each of said different page layouts. It would have been obvious to one of ordinary skill in the art at the time of the invention to use Ross's scoring to aid the decision process of King's invention.
20. **Regarding dependent claim 9**, King discloses in the Abstract the use of a recursive design tree to compare various layouts. Since recursion is internally represented by iteration, this process necessarily involves analyzing of said different page layouts that comprises a iteration of different page layouts and selecting the best page layout until the criteria are best met. However, King fails to disclose a situation where little or no further improvement in scoring is obtained, because King's process does not involve scoring. However, Ross teaches scoring, as described above. It would have been obvious to one of ordinary skill in the art at the time of the invention to add Ross's scoring to King's recursive decision process (whose underlying nature is iterative) in order to aid in the decision process.
21. **Regarding dependent claim 10**, King states in col. 40, lines 52-54, that scale factors may be used to adjust components' fit in the layout process, which constitutes a method further comprising the step of scaling individual images of the page layout obtained after said iteration.

22. **Regarding independent claim 24**, King discloses grouping said plurality of digital images utilizing a software program running on a computer into a plurality of different page layouts (King uses a media tree of different layouts to arrive at the eventual layout), analyzing each of said different page layouts in accordance with a predetermined criteria (in col. 3, lines 19-21, King's tree analysis proceeds until primitives are reached), and selecting the page layout based on said predetermined criteria because that is an inherent part of processing the images according to the media tree King uses. King also discloses analyzing each of said different page layouts in accordance with respect to the amount of white space in each of said plurality of different page layouts (in col. 3, lines 19-21, King's tree analysis proceeds until primitives are reached; in col. 41 lines 5-10, a white space scale factor is clearly a factor in determining how layouts are arrived at), and selecting the page layout based on said the amount of white space determined for each of said plurality of plurality of different page layouts (since the white space scale factor in analyzing the layouts, it is presumably applied to the media tree). King fails to disclose a method a method of organizing a plurality of images in a predetermined page format including an image void area comprising the steps of: identifying an area to be void of images and including the void area of images in the plurality of page layouts. However, Ross discloses in col. 10, lines 45-47, that objects may be empty in order to allow for proper positioning of document contents. It would have been obvious to one of ordinary skill in the art at the time of the invention to use Ross's empty objects in order to allow for proper positioning of document contents, which would necessarily imply a method of organizing a plurality of images in a predetermined page format including an image void

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area comprising the steps of: identifying an area to be void of images and including the area void of images in the plurality of page layouts.

23. Claim 6 remains rejected under 35 U.S.C. 103(a) as being unpatentable over King, further in view of Nakatake et al., from the applicant's previously disclosed prior art, hereinafter Nakatake

24. Regarding dependent claim 6, King fails to disclose a method wherein the amount of white space is minimized by using stochastic algorithms. However, Nakatake's teachings are relevant to an analogous situation, in which chips are arranged on an integrated circuit. In this situation, on pages 487-488 of the paper, Nakatake refers to using simulated annealing, which is a type of stochastic algorithm, because it packs with good area efficiency and therefore minimizes white space. It would have been obvious to one of ordinary skill in the art at the time of the invention to use Nakatake's method of simulated annealing to pack with good area efficiency, thereby resulting in a method wherein the amount of white space is minimized by using stochastic algorithms.

25. Claims 7 remains rejected under 35 U.S.C. 103(a) as being unpatentable over King, further in view of Fukui et al. (USPN 5,742,837—filing date 8/26/1994), hereinafter Fukui

26. Regarding dependent claim 7, King fails to disclose a method wherein said different page layouts include placing images in said different page layouts in a non-overlapping pattern. However, Fukui, in col. 7, lines 59-60, lists lack of overlapping as a criterion because it allows for an aesthetically pleasing layout. It would have been obvious to one of ordinary skill in the art at the time of the invention to use Fukui's criterion of avoiding

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overlap in order to arrive at a more aesthetically pleasing layout, thereby resulting in a method wherein said predetermined criteria include placing images in said different page layouts in a non-overlapping pattern.

27. **Claims 11 remains rejected under 35 U.S.C. 103(a) as being unpatentable over King, further in view of Ross, further in view of Bottomly (USPN 5,900,002—filing date 1/9/1995)**
28. **Regarding dependent claim 11**, King and Ross fail to disclose a method further comprising the step of rotating said images a predetermined amount. However, Bottomly, in col. 4, lines 21-31, discloses a process by which regions of the page are rotated 180 degrees to aid in orienting. It would have been obvious to one of ordinary skill in the art at the time of the invention to use Bottomly's method of rotating 180 degrees to aid in orienting, and this would have constituted a method further comprising the step of rotating said images a predetermined amount.
29. **Claims 13 and 21 remain rejected under 35 U.S.C. 103(a) as being unpatentable over King, further in view of Burns (USPN 6,014,137—filing date 2/27/1997)**
30. **Regarding dependent claim 13**, King fails to disclose a method further comprising the step of positioning said images in said selected page layout so as to provide a desired border on said page. However, Burns in col. 3, line 59 refers to the use of window borders in a kiosk authoring system that would require image arrangement in order to present the user with an aesthetically pleasing layout. It would have been obvious to one of ordinary skill in the art at the time of the invention to use borders in the method that Burns teaches in order to present the user with an aesthetically pleasing layout. Such a

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method would constitute a method further comprising the step of positioning said images in said selected page layout so as to provide a desired border on said page.

31. **Regarding dependent claim 21**, King fails to disclose a system wherein said computer is accessed by a retail kiosk. However, Burns, in col. 1, lines 11-37 reveals that kiosks are a popular method of providing information because they are generally accessible to the public. It would have been obvious to one of ordinary skill in the art at the time of the invention to have said computer be accessed by a retail kiosk in the manner of Burns, because then it would be generally accessible to the public.
32. **Claims 14-15 remain rejected under 35 U.S.C. 103(a) as being unpatentable over King, further in view of Burns, further in view of Archibald (USPN 5,459,826—filing date 5/25/1990)**
33. **Regarding dependent claim 14**, King and Burns fail to disclose a method according to claim 12 wherein said white space is determined vertically between adjacent images in said page layouts. However, Archibald, in col. 3, lines 12-19, discloses the use of a vertical-horizontal grid pattern to organize the components for the layout efficiently, and this constitutes determining the white space vertically (as well as horizontally). It would have been obvious to one of ordinary skill in the art at the time of the invention to follow Archibald's teachings and have said white space be determined vertically between adjacent images in said page layouts in order to organize the components for the layout efficiently.
34. **Regarding dependent claim 15**, King and Burns fail to disclose a method according to claim 12 wherein said white space is determined horizontally between adjacent images in

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said page layouts. However, Archibald, in col. 3, lines 12-19, discloses the use of a vertical-horizontal grid pattern to organize the components for the layout efficiently, and this constitutes determining the white space horizontally (as well as vertically). It would have been obvious to one of ordinary skill in the art at the time of the invention to follow Archibald's teachings and have said white space be determined horizontally between adjacent images in said page layouts in order to organize the components for the layout efficiently.

35. Claims 17-20 and 26 remain rejected under 35 U.S.C. 103(a) as being unpatentable over King

36. Regarding dependent claim 17, King fails to disclose a system wherein said computer can be accessed remotely over a communication network. However, it was notoriously well known in the art at the time of the invention that computers may be accessed remotely over communications networks to provide access to their resources when their users are at a remote location. It would have been obvious to one of ordinary skill in the art at the time of the invention to build a system wherein said computer can be accessed remotely over a communication network in order to provide access to their resources when their users are at a remote location.

37. Regarding dependent claim 18, King fails to disclose a system wherein said computer is accessed by a second computer. However, it was notoriously well known in the art at the time of the invention that in a network, computers are accessed by other computers in the network in order to make use of their capabilities. It would have been obvious to one of ordinary skill in the art at the time of the invention to build a system wherein said

computers is accessed by a second computer so that the second computer could make use of the first computer's capabilities.

38. **Regarding dependent claim 19**, King fails to disclose a system wherein said software program is run on said first computer. However, it was notoriously well known in the art at the time of the invention that in an invention where a piece of software is designed for a function, it should be run on appropriate hardware in order to be functional. It would have been obvious to one of ordinary skill in the art at the time of the invention to build a system wherein said software program is run on said first computer so that the software may be functional.

39. **Regarding dependent claim 20**, King fails to disclose a system wherein the second computer is the personal computer of a customer. However, it was notoriously well known in the art at the time of the invention that customers often use their personal computers to access photo services because this is a convenient means of access for him or her. It would have been obvious to one of ordinary skill in the art at the time of the invention to build a system wherein the second computer is the personal computer of a customer because this is a convenient means of access for him or her.

40. **Regarding dependent claim 26**, King fails to disclose a method comprising the step of permitting a user to request another page layout. However, it was notoriously well known in the art at the time of the invention that computer software products that perform a task often allow the user the option of performing the task again for the user's convenience. It would have been obvious to one of ordinary skill in the art at the time of

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the invention to allow the user to perform the page layout again for the user's convenience.

Response to Amendment

41. Applicant's arguments filed 11/17/2003 have been carefully and fully considered but are not persuasive. Applicant argues that the Invention produces different page layouts, each of which is capable of being printed. In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., the capability for each of the layouts to be printed) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).
42. Applicant argues that the white space referred to by King is not the same as the white space referred to by applicant in the claims. The Examiner maintains that a "white space scale factor" is operating on the white space in the layouts and hence it conforms with the white space as presently claimed.
43. Hence, the Examiner respectfully maintains that the Applicant's arguments are invalid.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

USPN 6,012,072 (filing date 1/5/1996)—Lucas et al.

USPN 6,012,074 (filing date 3/4/1997)—Lucas et al.

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THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

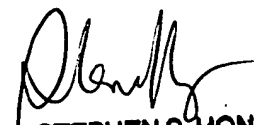
A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jonathan D. Schlaifer whose telephone number is 703-305-9777. The examiner can normally be reached on 8:30-5:00, M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Heather Herndon can be reached on 703-308-5186. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-305-3900.

JS


STEPHEN S. HONG
PRIMARY EXAMINER